IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

MFA.No. 1464 of 2001(B)

OPMV.1963/1994 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT:

MOHAMMED SHANI,
ARATHIL VEEDU,
MYLACAUD P.O.,
NOW RESIDING AT ZAINAN VILLA,
MYLACAUD, KOTTIYAM P.O., KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS:
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1. **POULOSE, S/O. VARGHESE,**
   THOPPILAN VEEDU, RAMANGALAM,
   RAMANGALAM VILLAGE, KUNNATHUNADU TALUK,
   ERNAKULAM.

2. **MANAGING DIRECTOR,**
   K.S.R.T C., THIRUVANANTHAPURAM.

BY ADV. SRI.JOHNSON P JOHN,SC KSRTC.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1464 OF 2001

Dated 28th November, 2007

JUDGMENT

Koshy,J.

Appellant/claimant sustained serious injuries in a motor accident on 27.6.1994. He claimed a compensation of Rs.12,50,000/=. Total compensation awarded by the Tribunal was Rs.5,03,000/= out of which Rs.1,40,000/= was granted for transportation charges in connection with the treatment in London and other expenses. According to the appellant, Rs.1,40,000/= granted is only the actual expenses for the imported artificial leg from London as evidenced by bill and transportation expenses for that purpose and no medical expenses were given. Apart from the above, it was contended that he was employed in Saudi Arabia. He produced salary certificate, passport and visa details. As far as his injuries are concerned, Ext.A5 certificate shows that there was fracture of both bones of right leg, fracture of 3rd ad 4th meta-carpel of right hand, comminuted fracture of femur right and right knee condyle fracture. Ext.A6 certificate shows that he was treated in the Medical College Hospital and his leg was amputated on 30.6.1994 . He was inpatient in the Medical College Hospital from 30.6.1994 to 2.8.1994. Ext.A7 shows that amputation was at the high thigh level. Thereafter skin grafting was done. He was treated for dental problems also as there

was class II fracture of four teeth and class I fracture of two teeth. He was treated at Apolo Hospital, District Hospital, Kollam and Medical College Hospital, Thiruvananthapuram. Considering the amputation and other difficulties, the doctor certified 50% disability. Tribunal has granted compensation for only 45% disability. The Tribunal who saw the applicant has no reason to reduce the disability as certified by the qualified medical practitioner. Medical Board assessed 50% disability.

2. With regard to his income, after considering the evidence, the Tribunal found that he was employed in Saudi Arabia during the relevant time as Accountant-cum-Sales Executive and the accident occurred during the leave period. His monthly salary was 3,950 Saudi Riyals equivalent to Rs.31,205/=. But, the Tribunal was of the view that stay in Saudi Arabia would be excessive and, therefore, for calculating compensation only Rs.3,000/= need be taken into account. In **United India Insurance Co. Ltd.** v. **Patricia Jean Mahajan and others** (JT 2002 (5) SC 74) it was held by the Supreme Court that when a person employed in foreign country sustained injuries in an accident, compensation should be calculated

on the basis of the income and rupee conversion rate as on the date of the accident should be taken. If that be so, monthly income will be more than Rs.30,000/=. But, we have to consider the expenses in foreign country. Now he is living in India and he is unable to return to Saudi and take up his job due to amputation of his leg. In any event, we are of the opinion that at least Rs.20,000/= should be taken as monthly income for calculation of compensation. If he was aged only 35 years, it is contended that taking guidance from the second schedule 17 is the multiplier, but, Tribunal has taken only 15 as the multiplier. Second schedule is only a guideline and when a high multiplicand is taken, Apex Court in **Patricia Jean Mahajan's** case (supra) held that a reduced multiplier can be taken if the multiplicand is very high. Therefore, no interference is needed in the multiplier taken as 15. It is true that we had taken only 2/3rd of the salary he was receiving at the time of accident as monthly income and we have also not considered future prospects in life. If that be so, compensation payable for 50% disability will be Rs.18,00,000/= (Rs.20,000 x 12 x $\frac{50}{100}$ x 15). What was given is only Rs.2,43,000/=. It was contended by the appellant that since he lost his employment, even though physical disability is 50%, he should be

granted compensation for 100% disability. We are of view that considering the interest that is payable for the amount granted etc. we can limit the compensation to the extent of the amount claimed in the application, that is Rs.12,50,000/=. So, the additional compensation payable will be Rs.7,47,000/= (Rs.12,50,000 – 5,03,000). The above amount should be deposited by the respondents with 6% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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